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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,786	09/21/2005	Andreas Melzer	008324-000002	2087
30565	7590	02/18/2010		
WOODARD, EMHARDT, MORIARTY, MCNETT & HENRY LLP			EXAMINER	
111 MONUMENT CIRCLE, SUITE 3700			BACHMAN, LINDSEY MICHELE	
INDIANAPOLIS, IN 46204-5137			ART UNIT	PAPER NUMBER
			3734	
		NOTIFICATION DATE		DELIVERY MODE
		02/18/2010		ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketDept@uspatent.com

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/540,786

**Applicant(s)**

MELZER ET AL.

**Examiner**

LINDSEY BACHMAN

**Art Unit**

3734

**—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —**

THE REPLY FILED 25 January 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a)  The period for reply expires \_\_\_\_ months from the mailing date of the final rejection.  
 b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a)  They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b)  They raise the issue of new matter (see NOTE below);  
 (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 74-101

Claim(s) withdrawn from consideration: \_\_\_\_\_

**AFFIDAVIT OR OTHER EVIDENCE**

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fail to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet

12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

13.  Other: \_\_\_\_\_

/Todd E Manahan/  
 Supervisory Patent Examiner, Art Unit 3734

/L. B./  
 Examiner, Art Unit 3734

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that the combination of Chevillion in view of Tsukernik do not teach the use of a plastic hub with metallic legs in order to achieve a capacitive effect. Examiner agrees with this assertion, however, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See Ex parte Obiaya, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Regarding Applicant's assertion that the hub of Chevillion is not comparable to the sliding mechanism of Tsukernik, Examiner disagrees. The hubs of both Chevillion and Tsukernik are both used to hold the legs of a filter together, and further, Tuskernek is only relied upon to teach that it is known to have a filter with metallic legs and a plastic hub.

Applicant first argues that the examiner has failed to articulate a method for forming a vessel filter to act as a capacitor without the need for individually-added annular capacitors. Applicant furthers this argument by pointing out that the prior art teaches that such addition of capacitors is necessary. The examiner does not disagree with this position, but respectfully submits that it is irrelevant to patentability. Nothing in the claim excludes the possibility that the capacitance is provided using the techniques of Melzer. More specifically, Melzer teaches both the concept of and the motivation for providing a capacitance having the claimed properties. The method that Melzer uses to achieve this is not relevant because the claim language does not further specify how the capacitance is achieved. Applicant's argument is that the invention provides the capacitance using a technique that is different from what Melzer uses. The examiner respectfully submits that this technique is not presently required by the claim. The examiner further submits that an amendment to clearly state this alternative technique would likely overcome the present rejections.

Applicant next argues that the combination of Melzer with the other references would result in a filter that performs the filtering function using more than just the conductor and dielectric, as is claimed. The examiner respectfully disagrees. The application of Melzer to the other references merely modifies the head portion of the filter in order to achieve the benefits described in Melzer. The remainder of the Chevilon and Tsukernik filters would remain unchanged. Thus, in the combination, the filtering function is performed by the conductor (as shown in Chevilon and Tsukernik) and the dielectric (as modified by Melzer). The argument is therefore not persuasive.